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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-189996

DATE: January 30, 1978

MATTER OF: Gichner Mobile Systems

**DIGEST:**

1. Evidence established that protester omitted cost factor for end walkway kits in bidding on either of two portions of a solicitation. Thus, bidder is not allowed correction since rules governing bid correction do not extend to permitting bidder to recalculate to include a factor which it did not have in mind when its bid was submitted.
2. Determination of appropriate authority (DARCOM) that evidence of intended bid was not clear and convincing is not unreasonable since cost for side walkway kits included in one portion of bid was not a constant which necessarily would have been the same had the protester originally used it in submitting its bid on the semi-trailer portion of the solicitation.
3. Correction of mistake for omission of price for interface and cabling parts kit in semitrailer portion of bid is not allowable because bidder's worksheets lack sufficient detail necessary to show intended price.
4. Recommendation by contracting officer that protester's bid be corrected in no way bound DARCOM nor should it have been reflective of DARCOM's independent consideration of evidence.
5. Where evidence establishes that errors in bid have been made and there is no evidence that protester's claim of such errors was not made in good faith, protester is not bound by its bid and may withdraw it.

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Gichner Mobile Systems (Gichner) protests the refusal of the Command Counsel, United States Army Materiel Development and Readiness Command (DARCOM), to permit correction of its bid. While Gichner was permitted to withdraw its low bid on a portion of the solicitation after opening when it allegedly discovered that it had placed certain costs in the wrong portion of its bid, it contends that DARCOM incorrectly refused to permit it to modify its bid. Specifically, Gichner disputes DARCOM's determination that correction must be disallowed because the mistake in bid discovered immediately after opening was one involving "a lack of judgment" and, therefore, not subject to correction.

Gichner also argues that DARCOM improperly refused to allow correction of a second, subsequently discovered bid error which allegedly arose out of a misinterpretation of a contract drawing. DARCOM found that while the evidence was clear and convincing that an error had been made, the evidence was not clear and convincing as to what Gichner's intended bid price was. Gichner admits that an overall intended bid price cannot be demonstrated but, nevertheless, urges that a partial correction be allowed for those solicitation items for which definitive prices can be shown by examination of the bid workpapers.

Finally, Gichner contends that because the contracting officer had recommended to DARCOM that correction of all alleged bid errors be allowed, DARCOM should have sustained the recommendation unless it found such recommendation was unreasonable.

The Army issued invitation for bids (IFB) No. DAHCO7-76-B-0079 for the procurement of electrical shelters and low bed semitrailers. The solicitation provided that a grouping of three shelters would be mounted on each semitrailer to form an operational and electrical facility. It also provided for a split award: (1) the shelters and associated line items; (2) the semitrailers and associated line items; or (3) the total award of both the shelters and the semitrailers. In the event the shelters and the semitrailers were not awarded to the same bidder, the solicitation stipulated that the semitrailers were to be delivered to the shelter contractor who would then be responsible for mounting the shelters on the semitrailers.

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On May 31, 1977, the Army opened the bids, and after evaluation Production Specialties, Inc., was determined to be the successful bidder for the shelter portion of the solicitation. Award for the shelters and associated line items was made to Production Specialties on June 30, 1977.

The bids submitted for each individual line item on the semitrailer portion of the solicitation were as follows:

	Item 0004	Item 0005
Gichner Mobile Systems	\$42,517	\$24,000
Nordam, Division of R.H. Siegfried Inc.	52,654	40,263
Craig Systems, Inc.	66,238	48,513

Immediately after bid opening, Gichner's representative at the opening discovered an error in bid as he was discussing the bids with a representative of one of the other bidders. Gichner notified the contracting officer of the error on June 16, 1977. By letter dated June 20, 1977, Gichner confirmed this notification and requested permission to either correct, or, in the alternative, to withdraw its bid. Gichner's letter set forth in chronological detail the events which led to the discovery of the error and further set forth a detailed explanation of a second bid error which had been discovered upon subsequent close examination of its bid.

Gichner's first alleged bid mistake involved the proper allocation of the cost of the interface and cabling parts kit used to mount each shelter on the semitrailers. Since it was undecided whether this cost belonged to the shelter portion of its bid or whether it belonged to the semitrailer part of its bid, Gichner decided to directly contact the contracting officer. A telephone call on May 20, 1977, to that office produced no answer at all. Gichner then decided to place the cost of the kit with the shelter portion of its bid on the rationale that section C.44 of the solicitation required the shelters to be installed by the bidder who was awarded the shelter part of the solicitation. Since the cost of the kit, in actuality, belonged with the semitrailer portion of the bid, Gichner requested the contracting officer to make a correction in cost of \$4,289 for each individual semitrailer.

Gichner's second alleged error involved the omission of certain costs from the semitrailer portion of its bid. Gichner believed that the only walkway kits required by the solicitation were the side walkway kits for a line item in the shelter portion. As of the date of its June 20, 1977, letter, Gichner was unsure whether or not two end walkways and three side walkways were also required for each semitrailer under the semitrailer portion of the solicitation. The amount of Gichner's second alleged error is \$6,827 for each individual semitrailer.

Gichner submitted its workpapers and prebid computations along with its June 20, 1977, letter. The contracting officer determined that if Gichner's allegations of mistake and corrected amounts were accepted it would displace the low bidder on the shelters and Gichner would remain the low bidder on the semitrailers although at a substantially higher price. Since neither the errors themselves nor the corrected bid was ascertainable from the IFB and the face of Gichner's bid, the contracting officer refused to permit correction of Gichner's shelter bid so as to displace the low bidder, Production Specialties, Inc. Gichner does not protest this decision on the shelter portion of the solicitation.

Applying Armed Services Procurement Regulation (ASPR) § 2-406.3 (1976 ed.) to Gichner's claimed bid errors on the semitrailer portion of the solicitation, the contracting officer determined that Gichner had presented clear and convincing evidence both as to the existence of the errors and to the actual intended bid. In accordance with ASPR § 2-406.3(e)(3), the contracting officer forwarded the matter to DARCC for its determination, recommending that Gichner be permitted to correct its semitrailer bid. On August 17, 1977, DARCOM determined that the protester's first bid mistake was an "error in judgment" which was not subject to correction under ASPR § 2-406.3. With regard to Gichner's second alleged mistake, DARCOM determined that while the evidence was clear and convincing that a mistake had been made, the bid workpapers failed to establish the protester's intended bid price. As a consequence, DARCOM authorized Gichner to withdraw its bid but not to correct it.

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Gichner was informed of DARCOM's adverse ruling by a letter dated August 19, 1977, from the contracting officer. By telegram dated August 29, 1977, and received by our Office on August 30, 1977, Gichner protested the award of any contract on the semitrailer portion of the Army's solicitation pending a ruling by us on its right to correct the two bid mistakes. Gichner submitted a letter of September 6, 1977, which sets forth in full the basis of the protest. The Army is withholding the award of the semitrailer portion of the solicitation pending a resolution of this protest.

We agree with DARCOM's decision to permit the protester to withdraw its bid but not to make any correction of it. By its own admission, Gichner made no computation in its bid workpapers for the cost of an end walkway kit. Strictly speaking, Gichner did not intend to submit a bid on either portion of the solicitation using this cost factor. Capay Painting Corporation, B-185954, June 10, 1976, 76-1 CPD 367. Thus, Gichner is not seeking to have its bid corrected to include a previously calculated item which it actually intended to include in, but which it inadvertently omitted from, the amount of its original bid. Since the cost of the end walkway kits was not a factor in its bid preparation, Gichner is, in effect, seeking correction on the basis of a cost computation performed after the opening of bids. Dynamech Corporation, B-182647, February 12, 1975, 75-1 CPD 92.

Unlike the end walkway kit cost, Gichner did make a computation prior to bid opening for the basic element of cost of a side walkway kit since Gichner had assumed that side walkway kits were included in a line item in the shelter portion of the solicitation. Using the bid preparation worksheets, Gichner contends that it is possible to reconstruct the bid it would have submitted had it been aware prior to bid opening that side walkway kits were also required for the semitrailer portion of the solicitation. However, in order to arrive at an overall cost for all the side walkway kits, further computations need to be made using material, manufacturing and engineering burdens; G and A and profit rates; and material escalation and manufacturing labor rates.

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After examining Gichner's bid preparation worksheets, DARCOM concluded that the intended costs for the side walkway kits for the semitrailer portion of the solicitation had not been shown. Although we have retained the right of review, the authority to correct mistakes alleged after bid opening but prior to award is vested in the procuring agency and the weight to be given the evidence in support of an alleged mistake is a question of fact to be considered by the administratively designated evaluator of evidence, whose decision will not be disturbed by us unless there is no reasonable basis for the decision. 53 Comp. Gen. 232, 235 (1973).

We believe that DARCOM had a reasonable basis for its conclusion. The bid preparation worksheets do not clearly and convincingly show what Gichner would have bid had the cost of the side walkway kits not been omitted from the bid calculation for the semitrailer portion of the solicitation. We are not convinced that Gichner's total price for the side walkway kits was a constant which necessarily would have been used by Gichner regardless of any variance between the total number of side walkway kits required for the shelter portion of the solicitation and the total number of side walkway kits required for the semitrailer portion of the solicitation. See Verne Manufacturing Corporation, B-190094, December 16, 1977, 77-2 CPD 476. While Gichner did make a computation based on 37 each side walkway kits for line item 0007, it admitted in its June 20, 1977, letter to the contracting officer that its bid did not include the cost of side walkway kits for the semitrailers based on 75 each side walkway kits for line items 0004 and 0005 in the semitrailer portion of the solicitation.

In this regard, the recommendation of the contracting officer that correction be allowed because the evidence was clear and convincing as to Gichner's intended bid in no way bound DARCOM. ASPR § 2-406.3(c)(3) (1976 ed.) mandates that bid correction requests be submitted to DARCOM for appropriate determination. Thus, any recommendation by the contracting officer would in no way be reflective of DARCOM's independent consideration of the evidence. 53 Comp. Gen., supra, at 235.

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We also believe that the information provided by Gichner in support of its bid correction request does not clearly and convincingly demonstrate what Gichner's intended bid price for the semitrailers would have been had the cost of the interface and cabling parts kit originally been a cost factor in this portion of the solicitation. Worksheets of a bidder may provide clear and convincing evidence of a mistake in bid if they are in good order and indicate the intended bid price. Trenton Industries, B-188001, March 31, 1977, 77-1 CPD 223. In exercising our review function, it is proper to examine the worksheets for the persuasiveness of the bidder's methodology in computing its bid. Oneida Chemical Company, Inc., O'Brian Cleaning Company, Inc., 53 Comp. Gen. 597 (1974), 74-1 CPD 73.

In its June 20, 1977, letter to the contracting officer, Gichner stated that in placing the cost of the interface and cabling parts kit in the shelter portion of the solicitation, Gichner amortized the costs of the kit between line items 0001 and 0003. The worksheets, however, show only a cost per shelter of mounting the shelter and accessories to each semitrailer. Furthermore, while Gichner claims that the worksheets set out the exact costs of material and labor for the interface and cabling parts kit, we find only a general entry for material and labor costs for loading trailers and accessories.

Gichner's worksheets, in short, lack the refinements of sufficiently detailed information necessary to the formulation of a definitive intended bid price. See Federal Contracting Corp., B-189630, November 23, 1977, 77-2 CPD 403. The use of costs for the mounting and loading of the shelters is too crude a figure to show what the cost of the interface and cabling parts kit was. While we have no reason to question the authenticity of the worksheets, we are not convinced that the figures set out on them indicate Gichner's intended cost for the interface and cabling parts kit.

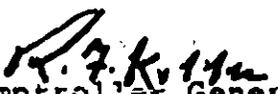
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However, Gichner may be permitted to withdraw its bid on the semitrailer portion of the solicitation. The degree of proof required to permit correction is much higher than that required to justify withdrawal of a bid. 51 Comp. Gen. 1, 3 (1971). Also, we have held that where the evidence establishes that errors in bid have been made and there is no evidence that protester's claim of such errors was not made in good faith, the protester is not bound by its bid and may withdraw it. S. J. Groves and Sons Company, B-184260, March 30, 1976, 76-1 CPD 205.

In United States v. Lipman, 122 F. Supp. 284, 287 (E.D. Pa. 1954), the court recognized the so-called "firm bid rule," designed to protect the integrity of the competitive bidding system, is inapplicable if the bidder can prove that the desire to withdraw is due solely to an honest mistake and that no fraud is involved. We have also stated that for the Government to make an award to a bidder alleging bid error who furnishes evidence establishing that an error was made, the Government must virtually undertake the burden of showing that either there was no error or that the bidder's claim of error was not made in good faith. B-157348, August 4, 1965.

Since DARCOM concluded that Gichner had established that errors in bid had been made, and since there is no indication in the administrative record that DARCOM believed such errors were not bona fide, we find no basis to reasonably dispute DARCOM's determination.

Accordingly, the protest is denied.

  
Deputy Comptroller General  
of the United States